

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

DREYER

Atty. Ref.: 4000-3

Reissue Application Serial No. 10/606,783

TC/A.U.: 3651

Filed: June 27, 2003

Examiner: Hess, Douglas A.

For: CONVEYOR IDLER

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February 1, 2008

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**REQUEST FOR RECONSIDERATION OF RENEWED PETITION TO REVIVE
ABANDONED PATENT APPLICATION UNDER RULE 181 AND PETITION
UNDER RULE 137(A) TO REVIVE AN UNAVOIDABLY ABANDONED
APPLICATION:**

HIGHER LEVEL REVIEW REQUESTED

In response to the petition decisions mailed August 28, 2007 and most recently on January 17, 2008, Applicant had two telephone calls with Mr. Charles Pearson, the SPE of the Office of Petitions, one on January 29, 2008 and the other on January 31, 2008. In the telephone conversation on January 31, 2008, and after reviewing the facts of this case, Mr. Pearson recommended that Applicant request reconsideration at a higher level of review and indicated that such a request would likely favorably resolved. That higher level review is requested.

The facts and arguments set forth in the petition dated June 28, 2007 are incorporated here by reference. In short, Applicant responded to the final action with an amendment filed on May 9, 2006. Primary Examiner Hess provided *written* correspondence with the official USPTO seal on the facsimile cover sheet dated August 1, 2006 (copy attached as Exhibit A in the initial petition) providing Applicant with a copy of an official Notice of Allowance form for this application. The Primary Examiner stated *in writing* that the Notice of Allowance “is in our system so the case will not go abandoned. Your time period will start upon official mailing of this Notice of Allowance.” (Emphasis added).

Applicant understandably and reasonably relied on this written official communication from the Primary Examiner. The Primary Examiner was an official representative from the USPTO who had all the necessary authority to make independent examination and patentability decisions. Applicant rightly relied on the Examiner’s written representations, instructions, and assurances.

Indeed, Applicant strongly disputes the patent office’s suggestion that “petitioner did not exercise a level of care consistent with a reasonably prudent person.” See page 5 of the most recent decision. Applicant was careful and prudent and made sure that the Examiner memorialized and communicated in writing that no further action or response was required by Applicant and that the application was allowed. Again, Primary Examiner Hess provided *written* correspondence with the official USPTO seal including a copy of an official Notice of Allowance and the unequivocal and unambiguous statements *in writing* that the Notice of Allowance “is in our system so the case will not

go abandoned. Your time period will start upon official mailing of this Notice of Allowance.” The written evidence is undisputed—the Primary Examiner had authority, both real and apparent, to make these written representations, and Applicant was fully entitled and justified in relying upon them.

Periodic phone calls were made to Examiner Hess to determine the status of the application, including telephone voicemails on August 31, 2006 and October 1, 2006, a written Status Inquiry filed March 6, 2007, and a further telephone voicemail left for Examiner Hess on April 23, 2007. In a telephone call from Examiner Hess in early May of 2007, Examiner Hess apologized that the case had “fallen through the cracks” and unfortunately had not been acted upon by the Patent Office for nearly ten months and that another reissue reviewing Examiner had found additional items that needed correction before Examiner Hess could allow the application. If the “ball was dropped”, it was dropped by the USPTO. Notwithstanding the notice of allowance faxed to Applicant on August 1, 2006, Applicant has now waited a year and half for the office make good on the Examiner’s representations and has spent considerable time and money to revive this application which never should have gone abandoned.

Given the facts in this case, and in particular, Applicant’s reasonable reliance on the written official communication from the Primary Examiner, and Applicant’s diligent follow-up with the Primary Examiner, the abandonment by the office was improper or at least was caused by the patent office. Accordingly, any delay in responding to the final office action, which the Primary Examiner had indicated in his facsimile of August 1,


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2006 did not need to be responded to, was the fault of the USPTO and was clearly unavoidable. Revival is requested and warranted in light of the circumstances.¹

Applicant has already paid a \$250 fee. No other fee should be required. But if it is then authority is given to charge such fee to our deposit account No. 14-1140.

Respectfully submitted,

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¹ In a telephone interview with Primary Examiner Hess on January 27, 2008, Mr. Hess advised the undersigned that the only remaining item required from Applicant for this application to pass the reissue panel review was to file an amendment correcting the way in which two deletions to the specification were indicated. That amendment was filed on January 30, 2008. A copy is attached for convenience. No further response is required by Applicant.